UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,396	01/23/2004	Terry Keith Bryant	1023.8009	8942

44538 7590 06/09/2011

DANIEL S. POLLEY, P.A.
7251 WEST PALMETTO PARK ROAD
SUITE 202
BOCA RATON, FL 33433

EXAMINER	
JIAN, SHIRLEY XUEYING	
ART UNIT	**PAPER NUMBER**
3769	

NOTIFICATION DATE	DELIVERY MODE
06/09/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

dan@danpolley.com
betty@danpolley.com
beatrizbernal@bellsouth.net

Office Action Summary	Application No.	Applicant(s)	
	10/767,396	BRYANT, TERRY KEITH	
	Examiner	Art Unit	
	SHIRLEY JIAN	3769	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 March 2011*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *3-9,11-17,19-28,30 and 38-40* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *3-9,11-17,19-28,30 and 38-40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Acknowledgement

The Examiner acknowledges the amendment filed on March 18, 2011 wherein claims 3-9, 11-17, 19-28, 30, and 38-40 are pending, claims 3, 6, 7, 9, 11, 12, 14-17, 19, 22 and 23 have been amended, claims 10, 18, 29, and 31-37 have been cancelled.

Claim Objection

Claims 3-9, 11-17, 19-28, 30, and 38-40 are objected to because of the following informalities: claims 3, 17, and 22, there should be a colon (:) after the phrase "consisting of".

Appropriate correction is required.

Note to Applicant Regarding Claim Interpretation

The words “in order to” and “for” in the claim(s) may be interpreted as intended use. Intended use/functional language does not require that reference specifically teach the intended use of the element. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then the prior art properly rejects the broadest reasonable interpretation of the claim. See, e.g., In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997)

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 3-9, 11-17, 19-28, 30 and 38-40 are rejected under 35 U.S.C. 102(e) as being anticipated by Mault et al. US Patent No. 6,790,178 B1.

In regards to claims 3, 17, and 22, Mault et al. teaches a plurality of physiological monitor modules, each module provides a particular gauging mechanism, e.g. spirometer, metabolism, weight body temperature etc. (col.4, ll.56). These physiological monitors may be plug-in type sensors to form an integral part with a computing device, i.e. a PDA where the PDA provides computing power to the monitor module (col.4, ll.41-56). Alternatively, Mault discloses that all the computing capabilities of a computing device, i.e. that of a PDA, may be incorporated into the module's housing such that the modules becomes a stand-alone device with its own processing electronics, see below.

> Alternatively, *the physiological monitor may be operational* ***without*** *being interconnected or in communication with a PDA*. Instead the physiological monitor measures one or more physiological parameters and stores the resulting data to memory. Optionally, *the monitor may have* ***onboard data processing*** *and/or display*. (col.5, ll.25-28 Emphasis added).

Further, Mault discloses that the module, as a stand alone device includes voice generation capabilities, see below.

> During use of the monitor module… *the PDA and module combination includes voice generation capability, either as part of the PDA itself,* ***as part of the module itself****, or as an additional accessory*, voice commands may be generated to instruct the user on proper use of the monitor module and/or to provide feedback and results. (col.5, ll.4-10 Emphasis added)

Since Mault states that the PDA and module combination is a preferred embodiment of invention, the following discussions are based on such embodiment (see Mault, col.5, ll.57-col.6, ll.9). But it should be noted that this by no means negates that it is within the scope of Mault's invention to manufacture a stand-alone physiological monitor with all the capabilities of a PDA and module integral device. This is evidenced by the passages previously cited (col.5, ll.4-10 and ll.25-28) and also below.

> As a further alternative, *the monitor module may include on-board wireless communication capability* so that the module may continuously or intermittently communicate with a PDA or other computing device. *The monitor module may be formed as one or more computer chips with* ***necessary sensors, memory, and communication hardware forming part of the chip***. For example, a single chip may include all of the necessary hardware to function as a monitor module, and be shaped so as to fit into an accessory slot in a PDA, either directly or via an adaptor. Wireless communication circuitry may be formed right on the chip, along with memory, and/or sensing hardware. (col.6, ll.3-14 Emphasis added)

Based on these evidences, it is clear that Mault's physiological monitor module may be manufactured as a stand-alone device to include all the functionality and computing electronics of a PDA and module integral device. It is the examiner's position that further discussions of the PDA's capabilities are equivalent to a stand-alone module's capabilities.

Mault's PDA unit is a typical computing device equipped with processor, memory, clock, audio/visual display, power supply and software programs for various applications (see col.5, ll.19-56). Specifically, the PDA has "software programs to prompt and remind a user to make use of the various physiological monitor modules as part of an overall health management

system "(col.6, ll.45-61, it is the Examiner's position that scheduled reminder prompts are sufficient to reject a timer unit). Additionally, during use of the monitor modules, the PDA utilizes voice recognition/generation capabilities to generate voice commands "to instruct the user on proper use of the monitor module and/or to provide feedback and results." (col.5, ll.4-18) Although Mault only teaches a PDA speaker/headphone jack specific to the EKG/heart sound module (see col.13, ll.57-64, col.14, ll.43-50 and Fig.11); however, it is inherent that a PDA with voice generation is at least equipped with a speaker/headphone jack such that it is able to provide voice commands to the user.

In regards to claims 4-8, 14-16, 19-21 and 25-27, voice commands are generated to instruct the user on proper use of the monitor module and/or to provide feedback and results (col.5, ll.4-15). In the health/diet management embodiment, the PDA carries health management software to enable the user to set up a variety of fitness plans including personal goals and targets (this is interpreted as the level setting unit), to track the user's adherence to the plans, and to provide feedbacks and recommendations (col.6, ll.62-col.12). In the body temperature monitoring embodiment, the PDA is able to determine a user's temperature in relation to a real-time clock, and provide warnings and treatment recommendation when the monitored temperature exceeds a pre-determined limit (col.17, ll.24-32, ll.45-55). In the EKG/heart sound monitoring embodiment, the PDA is equipped with additional analog and digital filtering circuitry to process the patient's heart sounds (col.14, ll.43-67).

In regards to claims 9-13, 23-24 and 38-40, during health management, the patient is prompted periodically by the PDA to make use of the various physiological monitor modules as part of an overall health management (col.6, ll.40-61). For example, when a user has specified

that he/she will walk or run a certain number of times for a certain distance each week, the PDA's software is able to prompt the user to remind them that, according to the schedule, they should use a pedometer module to monitor the specified activity (col.6, ll.62-12). The PDA stores the measured data when the user chooses to initiate the specified activity, or the PDA may allow the user to postpone the measurement until a more appropriate time (col.6, ll.45-61). Although Mault et al. does not distinctly disclosed that the PDA's prompts contain verbal messaged, it does teach that the PDA and various monitor modules have voice generation capabilities for generating voice commands to instruct and provide audio feedback to the user (see col.5, ll.4-15, col.7, ll.59-col.8, ll.22). It is the Examiner's position that this is sufficient to reject verbal messages.

In regards to claims 28 and 30, the PDA communicates with a remote comminuting device such that patient data can be further transmitted to the remote location for storage or analysis (col.7, ll.12-26).

Response to Arguments

The 35 USC § 112- second paragraph rejections to claims 12-13 are withdrawn due to claim amendments.

Applicant's arguments have been fully considered but they are not persuasive. Regarding to the claims, the applicant's main argument is that Mault fails to teach a single stand-alone device which houses both the sensor, the processing electronics, and the voice generating electronics because Mault discloses an integral device comprising a PDA and a plurality of plug-in physiological monitor modules.

The Examiner respectfully disagrees. The examiner has re-interpreted the Mault reference to clearly point out that Mault teaches an embodiment of the invention which the physiological monitor module is a stand-alone device which includes sensor, and all electronic components within a common housing of the modules; see col.5, ll.4-10 and ll.25-28, and col.6, ll.3-14.

Specifically, Mault contemplates 3 possible embodiments in the cited reference: 1) integral device where a physiological module is connected with a PDA, or other computing device (col.4, ll.41-56); 2) a physiological monitor module equipped with on-board processing and communicating electronics to function as a stand-alone device (col.5, ll.4-10 and ll.25-28, and col.6, ll.3-14); and 3) both the PDA and the physiological monitor module are equipped with external slots for mating with a memory module, which is used for transferring data between the monitor module and the PDA (col.5, ll.40-55). As shown, Mault's second embodiment satisfies the applicant's claim limitation directed to "a self-contained electronic assembly contained continuously in synthesis and continuously disposed within the housing of said medical apparatus such that the electronic assembly and said selected medical apparatus share a unitary common housing at all times and are in constant syntheses with each other to form an integral unitary medical apparatus in continuous synthesis with said electronic assembly" (claims 2, 17, and 22).

Further, the examiner must point out that the term “humanlike” in the preamble of claim 3 has been interpreted as "human sounding words" as evidenced by the applicant's specification (background [0001]). As such, Mault's voice generation capabilities are sufficient to meet the claim limitation, see Mault, col.5, ll.3-18. Further, Mault has pointed to co-pending provisional

patent application Ser. No. 60/212,319 (now Mault US Patent No. 7,392,193 B2) for more details, this application was incorporated in its entirety.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Mault US Patent No. 7,392,193 B2 physiological monitoring module with voice generation capabilities.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHIRLEY JIAN whose telephone number is (571)270-7374. The examiner can normally be reached on Monday-Friday 10:30am-6:00pm

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sam Chuan Yao can be reached on 571-272-1224. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SHIRLEY JIAN/
Examiner, Art Unit 3769

June 3, 2011

/SAM YAO/
Supervisory Patent Examiner, Art Unit 3769